

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

Headquarters Office

P. O. Box 420603

San Francisco, CA 94142

(415) 703-4810

(415) 703-4807 fax



2005 RETALIATION COMPLAINT REPORT (LABOR CODE §98.75)

Labor Code §98.7, which became effective January 1986, establishes the authority of the Labor Commissioner to investigate, process, and resolve employee complaints of discrimination arising under various sections of the Labor Code. The procedures established pursuant to Labor Code §98.7 entail an investigation and/or the convening of an investigative hearing after the filing of a complaint alleging discrimination in employment by an employee. In the event that the Labor Commissioner determines that a violation has occurred, the statute authorizes the Labor Commissioner to direct the violator to cease and desist from the violation and to take such action as is deemed necessary to remedy the violation including, where appropriate, rehiring or reinstatement of the aggrieved employee, reimbursement of lost wages and interest thereon, and/or payment of reasonable attorney's fees associated with any investigative hearing by the Labor Commissioner.

In 1986, the Division of Labor Standards Enforcement (DLSE) was charged with enforcing nine statutes prohibiting discrimination in the workplace. Currently, the Division is charged with enforcing thirty-one statutes and regulations prohibiting discrimination or retaliation in the work place. While the majority of these statutes are contained in the Labor Code, the Division also enforces statutes contained in the Health and Safety Code, the Unemployment Insurance Code, and Orders of the Industrial Welfare Commission.

The following data is submitted in accordance with Labor Code §98.75:

In calendar year 2004 the Division received 1,864 discrimination complaints. Of those, 1,052 complaints were accepted and assigned for investigation. In calendar year 2005 the Division received 1,969 discrimination complaints. Of those 959 were accepted and assigned for investigation as detailed in Exhibit A. There is currently a backlog of 1,110, which have been accepted and are waiting to be assigned to an investigator. This backlog is due to a staffing shortage during the previous year.

Exhibit A shows the number of complaints filed or opened under the various Labor Code Sections in 2005. Approximately 56% of all cases opened during the year were complaints filed pursuant to Labor Code Section 98.6, which prohibits retaliation or discrimination in the workplace as a result of filing or intending to file a claim with the Labor Commissioner. These claims numbered 486 with 98.6 being the single issue and 51 that included a second issue for a total of 537. The second largest group of complaints of discrimination filed arose from alleged retaliation for reporting health and safety issues in the workplace. These complaints numbering 183, 70 of which include a second issue, involved employees who claimed retaliation due to reporting safety and health violations on the job, which comprised 19% of total complaints filed.

Complaints filed alleging retaliation may contain one or more alleged violations and for the purpose of reflecting all of the complaints filed pursuant to Labor Code Sections 98.6, 6310 and 6311, they are listed as they were filed, as a single issue or in conjunction with other sections enforced by the Retaliation Investigation Unit.

Exhibit B shows the disposition of the various discrimination cases that were closed in 2005. Of the 806 cases closed in 2005, 13 of them were Decisions in favor of the complainant, 109 resulted in voluntary settlements to the satisfaction of both parties, 122 were dismissed, 165 were withdrawn by the complainants before a determination was reached, 40 were dismissed for lack of jurisdiction, and 357 cases were abandoned by the complainant.

In 2005, 7 referrals were made to the DLSE Legal Section to enforce the Labor Commissioner's finding of retaliation. Of the 7 referrals, 6 complaints were filed, and 1 case was settled prior to filing. Of the 6 complaints that were filed, three have been settled subsequent to filing and three are pending.

Beginning in 1993 the Division implemented a statewide-centralized Discrimination Complaint Investigation (DCI) Unit with five Deputy Labor Commissioners (Deputies) assigned full-time to investigate all discrimination complaints referred to the Division. The Deputies in the DCI Unit, currently ten full-time investigators, receive ongoing training in investigative techniques and report writing in an effort to ensure they all have a thorough knowledge of the discrimination statutes. The Division will continue to review its procedures to ensure the continuing success of the program.

Respectfully Submitted,

Date: February 5, 2007

Robert A. Jones
Acting State Labor Commissioner

Attachments